

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AMANDA BARBER)
1121 Tarkin Road)
Lot 122)
Lancaster, Ohio 43130)

Plaintiff,

v.

Defendant.

) CASE NO.
)
) JUDGE
)
)
)
)
) NOTICE OF REMOVAL OF CIVIL
) ACTION
)
)
)
)
)

Defendant TSMM Management, LLC (“TSMM,” or “Defendant”), by and through undersigned counsel, for its Notice of Removal of Civil Action to the United States District Court for the Southern District of Ohio, Eastern Division, from the Court of Common Pleas for Fairfield County, Ohio, states as follows:

1. On or about March 5, 2020, Plaintiff Amanda Barber (“Plaintiff”) commenced a civil action against TSMM entitled *Amanda Barber v. TSMM Management, LLC*, Case No. 2021 CV 00071, in the Fairfield County Court of Common Pleas (the “State Court Lawsuit”). A copy of all process, pleadings, and orders served upon TSMM in the State Court Lawsuit are attached as **Exhibit A**.

2. On March 10, 2020, TSMC was served with a copy of the Summons and Complaint in the State Court Lawsuit via certified mail, return receipt requested, to its Ohio statutory agent.

3. No further pleadings have been filed and no substantive proceedings have taken place in the State Court Lawsuit since the filing of the Complaint.

4. TSMC files this Notice of Removal within thirty (30) days after it received service of the Summons and Complaint. Accordingly, this Notice is timely filed in compliance with 28 U.S.C. §1446(b).

5. This action is being removed to this Court pursuant to 28 U.S.C.S. 1441(b) and 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties. Furthermore, based on the face of the Complaint, it is more likely than not that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See, e.g., Absolute Mach. Tools, Inc. v. Clancy Mach. Tools, Inc.*, 410 F. Supp. 665 (N.D. Ohio 2005).

6. Plaintiff is a citizen of the State of Ohio. *See* Compl. at ¶ 1.

7. TSMC is incorporated in the State of South Dakota with its principal place of business in Aberdeen, South Dakota. Therefore, P TSMC is a citizen of a state other than Ohio.

8. Because Plaintiff is a citizen of Ohio and TSMC is a South Dakota entity, with a principal place of business in South Dakota, complete diversity exists between the parties in this case.

9. Regarding the amount in controversy, Plaintiff alleges six separate claims: (1) Count I: alleged violation of the Ohio Whistleblower Statute, R.C. § 4113.52; (2) Count II: alleged termination in violation of Ohio public policy; (3) Count III: alleged disability discrimination in violation of R.C. § 4112.02; (4) Count IV: alleged failure to accommodate under R.C. § 4112.02; (5) Count V: alleged violation of the Ohio Wage Act; and (6) Count VI: alleged intentional infliction of emotional distress. In damages, Plaintiff seeks “compensatory and monetary damages to compensate [Plaintiff] for physical injury, physical sickness, lost wages, emotional distress, and other consequential damages, in an amount in excess of \$25,000 per claim...” *See* Compl., Demand for Relief.

10. Plaintiff also demands “[a]n award of punitive damages against TSMM in an amount in excess of \$25,000.” *See* Compl., Demand for Relief.

11. It is well-settled that the amount in controversy is not measured at the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated. *Angus v. Shiley, Inc.*, 989 F.2d 142, 146 (3d Cir. 1993). Further, Ohio Civil Rule 54(C) provides that “every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings.” *See, e.g., Davis v. Kindred Nursing Ctr. E., LLC*, 2006 U.S. Dist. LEXIS 11425 (S.D. Ohio, March 2, 2006) (removal proper despite the plaintiff’s attempt to disclaim damages in excess of \$75,000.00).

12. Plaintiff claims damages in excess of \$25,000.00 on each count of the Complaint against TSMM, for a total in excess of \$125,000 on Counts I-VI, alone. Combined with Plaintiff’s requested relief of punitive damages, an additional amount in excess of \$25,000, it is clear that the Complaint alleges an amount in controversy in excess of the \$75,000 jurisdictional threshold, not including Plaintiff’s claimed attorney’s fees and costs.

13. Accordingly, removal of this action is proper pursuant to 28 U.S.C. § 1441(b)(1) and 28 U.S.C. § 1332 because this Court has diversity of citizenship jurisdiction.

14. On the same date as the filing of this Notice of Removal of Civil Action, TSMM served by electronic mail a copy of this Notice of Removal of Civil Action upon Plaintiff’s counsel at the address set forth in the Complaint: Sean Costello, Esq.; Trisha Breedlove, Esq.; The Spitz Law Firm, LLC, 1103 Schrock Road, Suite 307, Columbus, Ohio, 43229; Sean.costello@spitzlawfirm.com; Trisha.breedlove@spitzlawfirm.com.

15. On the same date as the filing of this Notice of Removal, TSMM is also filing a copy of this Notice of Removal with the Clerk of Court for the Court of Common Pleas for Fairfield County, Ohio, the county in which this action was commenced and is pending at this time. A true and accurate copy of this Notice of Filing of Notice of Removal is attached hereto as **Exhibit B**.

WHEREFORE, TSMM respectfully requests that the above-entitled action now pending against them in the Fairfield County Court of Common Pleas be removed therefrom to this Court.

Dated: April 6, 2021

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Vincent J. Tersigni
Vincent J. Tersigni (#0040222)
Richard L. Hilbrich (#0092143)
Park Center Plaza I, Suite 400
6100 Oak Tree Boulevard
Cleveland, OH 44131
Tel.: (216) 750-0404
Fax: (216) 750-0826
Vincent.Tersigni@JacksonLewis.com
Richard.Hilbrich@JacksonLewis.com

*Counsel for Defendant TSMM Management,
LLC*